



General Assembly

February Session, 2012

Amendment

LCO No. 4903

HB0545104903HD0

Offered by:

REP. TERCYAK, 26th Dist.

SEN. MUSTO, 22nd Dist.

REP. MORRIS, 140th Dist.

SEN. COLEMAN, 2nd Dist.

To: Subst. House Bill No. **5451**

File No. 257

Cal. No. 210

**"AN ACT CONCERNING TRANSPARENCY IN NURSING HOME
COST REPORTS."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (a) of section 17b-340 of the 2012 supplement
4 to the general statutes is repealed and the following is substituted in
5 lieu thereof (*Effective July 1, 2012*):

6 (a) The rates to be paid by or for persons aided or cared for by the
7 state or any town in this state to licensed chronic and convalescent
8 nursing homes, to chronic disease hospitals associated with chronic
9 and convalescent nursing homes, to rest homes with nursing
10 supervision, to licensed residential care homes, as defined by section
11 19a-490, and to residential facilities for the mentally retarded which are
12 licensed pursuant to section 17a-227 and certified to participate in the

13 Title XIX Medicaid program as intermediate care facilities for the
14 mentally retarded, for room, board and services specified in licensing
15 regulations issued by the licensing agency shall be determined
16 annually, except as otherwise provided in this subsection, after a
17 public hearing, by the Commissioner of Social Services, to be effective
18 July first of each year except as otherwise provided in this subsection.
19 Such rates shall be determined on a basis of a reasonable payment for
20 such necessary services, which basis shall take into account as a factor
21 the costs of such services. Cost of such services shall include
22 reasonable costs mandated by collective bargaining agreements with
23 certified collective bargaining agents or other agreements between the
24 employer and employees, provided "employees" shall not include
25 persons employed as managers or chief administrators or required to
26 be licensed as nursing home administrators, and compensation for
27 services rendered by proprietors at prevailing wage rates, as
28 determined by application of principles of accounting as prescribed by
29 said commissioner. Cost of such services shall not include amounts
30 paid by the facilities to employees as salary, or to attorneys or
31 consultants as fees, where the responsibility of the employees,
32 attorneys, or consultants is to persuade or seek to persuade the other
33 employees of the facility to support or oppose unionization. Nothing
34 in this subsection shall prohibit inclusion of amounts paid for legal
35 counsel related to the negotiation of collective bargaining agreements,
36 the settlement of grievances or normal administration of labor
37 relations. The commissioner may, in his discretion, allow the inclusion
38 of extraordinary and unanticipated costs of providing services which
39 were incurred to avoid an immediate negative impact on the health
40 and safety of patients. The commissioner may, in his discretion, based
41 upon review of a facility's costs, direct care staff to patient ratio and
42 any other related information, revise a facility's rate for any increases
43 or decreases to total licensed capacity of more than ten beds or changes
44 to its number of licensed rest home with nursing supervision beds and
45 chronic and convalescent nursing home beds. The commissioner may
46 so revise a facility's rate established for the fiscal year ending June 30,
47 1993, and thereafter for any bed increases, decreases or changes in

48 licensure effective after October 1, 1989. Effective July 1, 1991, in
49 facilities which have both a chronic and convalescent nursing home
50 and a rest home with nursing supervision, the rate for the rest home
51 with nursing supervision shall not exceed such facility's rate for its
52 chronic and convalescent nursing home. All such facilities for which
53 rates are determined under this subsection shall report on a fiscal year
54 basis ending on the thirtieth day of September. Such report shall be
55 submitted to the commissioner by the thirty-first day of December.
56 Each for-profit chronic and convalescent nursing home which receives
57 state funding pursuant to this section shall include in such annual cost
58 report a profit and loss statement from each related party that the
59 nursing home pays ten thousand dollars or more a year for goods, fees
60 and services. For purposes of this subsection, (1) a "related party"
61 includes, but is not limited to, companies related to such nursing
62 homes through family associations, common ownership, control or
63 business association with any of the owners, operators or officials of
64 the facility; (2) "company" means any person, partnership, association,
65 company, holding company, limited liability company or corporation;
66 (3) "family association" means a relationship by birth, marriage or
67 domestic partnership; and (4) "profit and loss statement" means the
68 most recent annual statement on profits and losses finalized by a
69 related party before the annual report mandated under this subsection.
70 The commissioner may reduce the rate in effect for a facility which
71 fails to report on or before such date by an amount not to exceed ten
72 per cent of such rate. The commissioner shall annually, on or before
73 the fifteenth day of February, report the data contained in the reports
74 of such facilities to the joint standing committee of the General
75 Assembly having cognizance of matters relating to appropriations. For
76 the cost reporting year commencing October 1, 1985, and for
77 subsequent cost reporting years, facilities shall report the cost of using
78 the services of any nursing pool employee by separating said cost into
79 two categories, the portion of the cost equal to the salary of the
80 employee for whom the nursing pool employee is substituting shall be
81 considered a nursing cost and any cost in excess of such salary shall be
82 further divided so that seventy-five per cent of the excess cost shall be

83 considered an administrative or general cost and twenty-five per cent
84 of the excess cost shall be considered a nursing cost, provided if the
85 total nursing pool costs of a facility for any cost year are equal to or
86 exceed fifteen per cent of the total nursing expenditures of the facility
87 for such cost year, no portion of nursing pool costs in excess of fifteen
88 per cent shall be classified as administrative or general costs. The
89 commissioner, in determining such rates, shall also take into account
90 the classification of patients or boarders according to special care
91 requirements or classification of the facility according to such factors
92 as facilities and services and such other factors as he deems reasonable,
93 including anticipated fluctuations in the cost of providing such
94 services. The commissioner may establish a separate rate for a facility
95 or a portion of a facility for traumatic brain injury patients who require
96 extensive care but not acute general hospital care. Such separate rate
97 shall reflect the special care requirements of such patients. If changes
98 in federal or state laws, regulations or standards adopted subsequent
99 to June 30, 1985, result in increased costs or expenditures in an amount
100 exceeding one-half of one per cent of allowable costs for the most
101 recent cost reporting year, the commissioner shall adjust rates and
102 provide payment for any such increased reasonable costs or
103 expenditures within a reasonable period of time retroactive to the date
104 of enforcement. Nothing in this section shall be construed to require
105 the Department of Social Services to adjust rates and provide payment
106 for any increases in costs resulting from an inspection of a facility by
107 the Department of Public Health. Such assistance as the commissioner
108 requires from other state agencies or departments in determining rates
109 shall be made available to him at his request. Payment of the rates
110 established hereunder shall be conditioned on the establishment by
111 such facilities of admissions procedures which conform with this
112 section, section 19a-533 and all other applicable provisions of the law
113 and the provision of equality of treatment to all persons in such
114 facilities. The established rates shall be the maximum amount
115 chargeable by such facilities for care of such beneficiaries, and the
116 acceptance by or on behalf of any such facility of any additional
117 compensation for care of any such beneficiary from any other person

118 or source shall constitute the offense of aiding a beneficiary to obtain
119 aid to which he is not entitled and shall be punishable in the same
120 manner as is provided in subsection (b) of section 17b-97. For the fiscal
121 year ending June 30, 1992, rates for licensed residential care homes and
122 intermediate care facilities for the mentally retarded may receive an
123 increase not to exceed the most recent annual increase in the Regional
124 Data Resources Incorporated McGraw-Hill Health Care Costs:
125 Consumer Price Index (all urban)-All Items. Rates for newly certified
126 intermediate care facilities for the mentally retarded shall not exceed
127 one hundred fifty per cent of the median rate of rates in effect on
128 January 31, 1991, for intermediate care facilities for the mentally
129 retarded certified prior to February 1, 1991. Notwithstanding any
130 provision of this section, the Commissioner of Social Services may,
131 within available appropriations, provide an interim rate increase for a
132 licensed chronic and convalescent nursing home or a rest home with
133 nursing supervision for rate periods no earlier than April 1, 2004, only
134 if the commissioner determines that the increase is necessary to avoid
135 the filing of a petition for relief under Title 11 of the United States
136 Code; imposition of receivership pursuant to sections 19a-541 to 19a-
137 549, inclusive; or substantial deterioration of the facility's financial
138 condition that may be expected to adversely affect resident care and
139 the continued operation of the facility, and the commissioner
140 determines that the continued operation of the facility is in the best
141 interest of the state. The commissioner shall consider any requests for
142 interim rate increases on file with the department from March 30, 2004,
143 and those submitted subsequently for rate periods no earlier than
144 April 1, 2004. When reviewing a rate increase request the
145 commissioner shall, at a minimum, consider: [(1)] (A) Existing chronic
146 and convalescent nursing home or rest home with nursing supervision
147 utilization in the area and projected bed need; [(2)] (B) physical plant
148 long-term viability and the ability of the owner or purchaser to
149 implement any necessary property improvements; [(3)] (C) licensure
150 and certification compliance history; [(4)] (D) reasonableness of actual
151 and projected expenses; and [(5)] (E) the ability of the facility to meet
152 wage and benefit costs. No rate shall be increased pursuant to this

153 subsection in excess of one hundred fifteen per cent of the median rate
154 for the facility's peer grouping, established pursuant to subdivision (2)
155 of subsection (f) of this section, unless recommended by the
156 commissioner and approved by the Secretary of the Office of Policy
157 and Management after consultation with the commissioner. Such
158 median rates shall be published by the Department of Social Services
159 not later than April first of each year. In the event that a facility
160 granted an interim rate increase pursuant to this section is sold or
161 otherwise conveyed for value to an unrelated entity less than five years
162 after the effective date of such rate increase, the rate increase shall be
163 deemed rescinded and the department shall recover an amount equal
164 to the difference between payments made for all affected rate periods
165 and payments that would have been made if the interim rate increase
166 was not granted. The commissioner may seek recovery from payments
167 made to any facility with common ownership. With the approval of
168 the Secretary of the Office of Policy and Management, the
169 commissioner may waive recovery and rescission of the interim rate
170 for good cause shown that is not inconsistent with this section,
171 including, but not limited to, transfers to family members that were
172 made for no value. The commissioner shall provide written quarterly
173 reports to the joint standing committees of the General Assembly
174 having cognizance of matters relating to human services and
175 appropriations and the budgets of state agencies and to the select
176 committee of the General Assembly having cognizance of matters
177 relating to aging, that identify each facility requesting an interim rate
178 increase, the amount of the requested rate increase for each facility, the
179 action taken by the commissioner and the secretary pursuant to this
180 subsection, and estimates of the additional cost to the state for each
181 approved interim rate increase. Nothing in this subsection shall
182 prohibit the commissioner from increasing the rate of a licensed
183 chronic and convalescent nursing home or a rest home with nursing
184 supervision for allowable costs associated with facility capital
185 improvements or increasing the rate in case of a sale of a licensed
186 chronic and convalescent nursing home or a rest home with nursing
187 supervision, pursuant to subdivision (15) of subsection (f) of this

188 section, if receivership has been imposed on such home."

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>July 1, 2012</i>	17b-340(a)
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